

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the United States Department of Labor, Office of Workers’ Compensation Programs (“DOL-OWCP”) (collectively the “United States”) and Forest Park Medical Center, LLC (“FPMC”), through their authorized representatives. The United States and FPMC are hereafter collectively referred to as “the Parties.”

RECITALS

- A. At all relevant times, FPMC was a physician-owned hospital located in Dallas, Texas.
- B. DOL-OWCP administers the federal workers’ compensation program established pursuant to the Federal Employees’ Compensation Act, 5 U.S.C. §§ 8101 to 8152 (“FECA program”). The FECA program is a federal health care program.
- C. The United States contends it has certain civil claims against FPMC for submitting, or causing others to submit, claims to the FECA program for patients referred to FPMC by individuals or entities located in the Western District of Texas that were provided with remuneration, including amounts for “marketing” and “management” services, by a representative of FPMC between August 1, 2011 and March 1, 2012. The United States contends such payments were unlawful kickbacks for the referral of federal health care patients in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(1)(A), and the False Claims Act, 31 U.S.C. §§ 3729 to 3733, pursuant to 42 U.S.C. § 1320a-7b(g). The conduct described in this Paragraph C is referred to below as the “Covered Conduct.”

D. This Agreement is neither an admission of facts or liability by FPMC nor a concession by the United States that its claims are not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. FPMC shall pay to the United States \$215,000 ("Settlement Amount") pursuant to written instructions to be provided by the U.S. Attorney's Office for the Western District of Texas. Payment of the Settlement Amount shall be made in four installments as follows: (1) within 5 days of the Effective Date of this Agreement (defined below), FPMC shall pay \$61,646.61 to the United States; (2) within 30 days of the Effective Date, FPMC shall pay \$61,646.61 to the United States; (3) within 60 days of the Effective Date, FPMC shall pay \$45,853.39 to the United States; and (4) within 90 days of the Effective Date, FPMC shall pay \$45,853.39 to the United States.

2. As security for the full and prompt payment of the Settlement Amount, FPMC agrees as follows. If FPMC fails to make any payment required by this Agreement, FPMC shall have 5 business days from receipt of written notice of default to pay the amount due in full. Written notice of default shall be directed to counsel for FPMC via certified mail addressed to Brandt Leibe, King & Spalding, 1100 Louisiana, Ste. 4000, Houston TX 77002. If FPMC fails to pay the amount due in full within 5 business days of counsel's receipt of written notice of default, FPMC agrees that the remaining unpaid balance of the Settlement Amount shall become immediately due and payable. In the event of uncured default, FPMC agrees and consents to entry of judgment

in favor of the United States and against FPMC in the amount of the unpaid balance of the Settlement Amount, and the United States, at its sole option, may (1) offset the remaining unpaid balance of the Settlement Amount from any amounts due and owing to FPMC by any department, agency, or agent of the United States at the time of or subsequent to the default, (2) rescind this Agreement, and/or (3) institute an action against FPMC for the Covered Conduct. FPMC shall not contest any offset imposed or any collection action undertaken by the United States or other department, agency, or agent of the United States pursuant to this Paragraph. In the event the United States institutes an action against FPMC under this Paragraph, FPMC agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims, actions or proceedings, which: (a) are brought by the United States within one hundred-twenty (120) calendar days of receipt of notice of default under this Paragraph, and (b) relate to the Covered Conduct, except to the extent such defenses were available on October 14, 2014. FPMC shall pay the United States all reasonable costs of collection and enforcement under this Paragraph, including reasonable attorney's fees and expenses. The terms and agreements reflected in this paragraph comprise a material part of the consideration for this Agreement.

3. The United States covenants not to sue FPMC and its subsidiaries and affiliates for the Covered Conduct while FPMC is in compliance with this Agreement. This covenant will mature into a release, as set forth below, when FPMC pays the full Settlement Amount.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon FPMC's full payment of the Settlement Amount, and subject to Paragraph 14, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States releases FPMC and its subsidiaries and affiliates from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, disgorgement, and fraud.

5. In consideration of the obligations of FPMC in this Agreement, and conditioned upon FPMC's full payment of the Settlement Amount, DOL-OWCP agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the FECA program against FPMC and its subsidiaries and affiliates (but not any individuals, including officers and employees of FPMC) under 20 C.F.R. §10.815(j) (exclusion for conduct DOL-OWCP finds to be misleading, deceptive or unfair) for the Covered Conduct, except as reserved in Paragraph 6 (concerning excluded claims), below, and as reserved in this Paragraph. DOL-OWCP expressly reserves all rights to comply with any statutory and regulatory obligations to exclude FPMC from the FECA program under 20 C.F.R. §§ 10.815 (a)-(b) and 10.816 (addressing mandatory exclusion based on criminal conviction or exclusion from other government health care programs) based upon the Covered Conduct. Nothing in this

Paragraph precludes the DOL-OWCP from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 6, below.

6. Notwithstanding the release given in paragraphs 4 and 5 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or
- i. Any liability of individuals, including officers and employees of FPMC.

7. FPMC waives and shall not assert any defenses FPMC may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

8. FPMC fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that FPMC has asserted, could have asserted, or may assert in the future against the United States, and its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

9. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any federal health care program or any state payer, related to the Covered Conduct; and FPMC agrees not to resubmit to any federal health care program or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal denials of such claims.

10. FPMC agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the

Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of FPMC and its present or former officers, directors, employees, shareholders, and agents in connection with:

- i. the matters covered by this Agreement;
- ii. the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- iii. FPMC's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- iv. the negotiation and performance of this Agreement; and
- v. the payment FPMC makes to the United States pursuant to this Agreement, are unallowable costs for government contracting purposes and under all federal health care programs.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by FPMC, and FPMC shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by FPMC or any of its subsidiaries or affiliates to any federal health care program.

c. Treatment of Unallowable Costs Previously Submitted for Payment: FPMC further agrees that within 90 days of the Effective Date of this Agreement it shall identify to DOL-OWCP any Unallowable Costs (as defined in this

Paragraph) included in payments previously sought from the United States, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by FPMC or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. FPMC agrees that the United States, at a minimum, shall be entitled to recoup from FPMC any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by FPMC or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on FPMC or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine FPMC's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

11. FPMC agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, FPMC shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage,

the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. FPMC further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

12. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 4, above, and Paragraph 13 (waiver for beneficiaries paragraph), below.

13. FPMC agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

14. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, FPMC commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of FPMC's debts, or seeking to adjudicate FPMC as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for FPMC or for all or any substantial part of FPMC's assets, FPMC agrees as follows:

a. FPMC's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and FPMC shall not argue or otherwise take the position in

any such case, proceeding, or action that: (i) FPMC's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) FPMC was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to FPMC.

b. If FPMC's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against FPMC for the claims that would otherwise be covered by the releases provided in Paragraphs 4 and 5, above. FPMC agrees that (i) any such claims, actions, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and FPMC shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) FPMC shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States within 14 calendar days of written notification to FPMC that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on October 14, 2014; and (iii) the United States has a valid claim against FPMC in the amount of \$600,879.63, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. FPMC acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

15. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

17. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Western District of Texas, San Antonio Division. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

18. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

19. The undersigned representatives and counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

20. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

21. This Agreement is binding on FPMC's successors, transferees, and assigns.

22. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

23. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

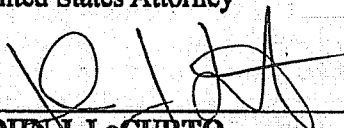
THE UNITED STATES OF AMERICA

~~ROBERT PITTMAN~~^{JLL}
~~United States Attorney~~

RICHARD L. DURBIN, JR
ACTING UNITED STATES ATTORNEY

DATED: 1/13/15

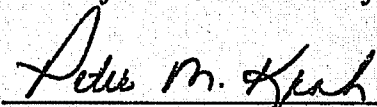
BY:


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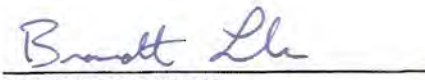
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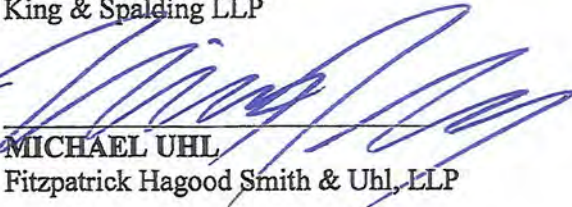
BY:


PETER M. KRAH
Chief, Medical Standards and Rehabilitation
Office of Workers' Compensation Programs
United States Department of Labor

FOREST PARK MEDICAL CENTER - DALLAS

DATED: 1/9/2015 BY: 
ARCHIE DRAKE
Chief Executive Officer

DATED: 1/9/15 BY: 
BRANDT LEIBE
King & Spalding LLP

DATED: 1/9/15 BY: 
MICHAEL UHL
Fitzpatrick Hagood Smith & Uhl, LLP
Counsel for Forest Park Medical Center, LLC - Dallas